

Supreme Court, U. S.

FILED

JUL 9 1979

IN THE

Supreme Court of the United States

MICHAEL RODAK, JR., CLERK

October Term, 1978

No. 79 - 31

WILLIAM J. Cox, a citizen of the United States, on behalf of himself and all others similarly situated,

Petitioner,

vs.

JIMMY CARTER, President of the United States, or his designated representative, WALTER F. MONDALE, Vice-President of the United States, and each honorable member of the United States Senate, Senator WILLIAM ARMSTRONG, *et al.*,¹

Respondents.

Motion for Leave to File Petition for Writ of Mandamus, Petition for Writ of Mandamus and Brief in Support Thereof.

WILLIAM J. COX,

708 Gladys Avenue,
Long Beach, Calif. 90804,
(213) 433-0961,

In Propria Persona.

¹Attachment "A" incorporated by reference.

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(ATTACHMENT "A")

SENATORS

Vice President Mondale,
Walter F. (Minn.)

Armstrong, William (Colo.)
Baker, Howard H., Jr. (Tenn.)
Baucus, Max (Mont.)
Bayh, Birch (Ind.)
Bellmon, Henry (Okla.)
Bentsen, Lloyd (Tex.)
Biden, Joseph R., Jr. (Del.)
Boren, David (Okla.)
Boschwitz, Rudy (Minn.)
Bradley, Bill (N.J.)
Bumpers, Dale (Ark.)
Burdick, Quentin N. (N. Dak.)
Byrd, Harry F., Jr. (Va.)
Byrd, Robert C. (W. Va.)
Cannon, Howard W. (Nev.)
Chafee, John H. (R.I.)
Chiles, Lawton (Fla.)
Church, Frank (Idaho)
Cochran, Thad (Miss.)
Cohen, William (Maine)
Cranston, Alan (Calif.)
Culver, John C. (Iowa)
Danforth, John C. (Mo.)
DeConcini, Dennis (Ariz.)
Dole, Robert (Kans.)
Domenici, Pete V. (N. Mex.)
Durenberger, David (Minn.)
Durkin, John A. (N.H.)
Eagleton, Thomas F. (Mo.)
Exon, J. James (Neb.)
Ford, Wendell H. (Ky.)
Garn, Jake (Utah)
Glenn, John (Ohio)
Goldwater, Barry (Ariz.)
Gravel, Mike (Alaska)
Hart, Gary (Colo.)
Hatch, Orrin G. (Utah)
Hatfield, Mark O. (Oreg.)
Hayakawa, S. I. (Sam)
(Calif.)
Heflin, Howell (Ala.)
Heinz, H. John, III (Pa.)
Helms, Jesse (N.C.)

Hollings, Ernest F. (S.C.)
Huddleston, Walter D. (Ky.)
Humphrey, Gordon (N.H.)
Inouye, Daniel K. (Hawaii)
Jackson, Henry M. (Wash.)
Javits, Jacob K. (N.Y.)
Jepsen, Roger (Iowa)
Johnston, J. Bennett, Jr. (La.)
Kassedau, Nancy Landon
(Kan.)
Kennedy, Edward M. (Mass.)
Laxalt, Paul (Nev.)
Leahy, Patrick J. (Vt.)
Levin, Carl (Mich.)
Long, Russell B. (La.)
Lugar, Richard G. (Ind.)
McClure, James A. (Idaho)
McGovern, George (S. Dak.)
Magnuson, Warren G. (Wash.)
Mathias, Charles McC., Jr.
(Md.)
Matsunaga, Spark M. (Hawaii)
Melcher, John (Mont.)
Metzenbaum, Howard M.
(Ohio)
Morgan, Robert (N.C.)
Moynihan, Daniel Patrick
(N.Y.)
Muskie, Edmund S. (Maine)
Nelson, Gaylord (Wis.)
Nunn, Sam (Ga.)
Packwood, Bob (Oreg.)
Pell, Claiborne (R.I.)
Percy, Charles H. (Ill.)
Pressler, Larry (S.D.)
Proxmire, William (Wis.)
Pryor, David (Ark.)
Randolph, Jennings (W. Va.)
Ribicoff, Abraham (Conn.)
Riegle, Donald W., Jr. (Mich.)
Roth, William V., Jr. (Del.)
Sarbanes, Paul S. (Md.)
Sasser, Jim (Tenn.)
Schmitt, Harrison (Jack)
(N. Mex.)
Schweiker, Richard S. (Pa.)

Simpson, Alan (Wyo.)
Stafford, Robert T. (Vt.)
Stennis, John C. (Miss.)
Stevens, Ted (Alaska)
Stevenson, Adlai E. (Ill.)
Stewart, Donald W. (Ala.)
Stone, Richard (Dick) (Fla.)
Talmadge, Herman E. (Ga.)
Thurmond, Strom (S.C.)
Tower, John (Tex.)

Tsongas, Paul (Mass.)
Wallop, Malcolm (Wyo.)
Warner, John (Va.)
Weicker, Lowell P., Jr.
(Conn.)
Williams, Harrison A., Jr.
(N.J.)
Young, Milton R. (N. Dak.)
Zorinsky, Edward (Nebr.)

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Respondents.

Motion for Leave to File Petition for Writ of Mandamus.

The petitioner moves the Court for leave to file the petition for a writ of mandamus hereto annexed; and further moves that an order and rule be entered and issued directing respondents to show cause why a writ of mandamus should not be issued against them in accordance with the prayer of said petition, and why your petitioner should not have such other and further relief in the premises as may be just and proper.

WILLIAM J. COX,

In Propria Persona.

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Respondents.

Petition for a Writ of Mandamus to the President of the United States, Jimmy Carter, the Vice-President of the United States, Walter Mondale, and to Each Individual United States Senator, William Armstrong, *et al.*

1. On June 18, 1979, President Carter signed a treaty, commonly referred to as SALT II, with the Soviet Union to limit nuclear arms. That treaty has been submitted to the United States Senate for ratification.

2. There is a widely held belief, shared by many, that the Congress of the United States is in the "grips of special interest groups" and is no longer responsive

to the needs of individual citizens. The President, in an address on June 7, 1979, to the United Food and Commercial Workers International Convention declared, "The greatest democratic system in the world is twisted and pulled in every direction by hundreds of well-financed, powerful special interest groups."

3. If the proposed treaty is ratified, it will create a strategic inferiority with the Soviet Union having a nearly 2 to 1 advantage in strategic offensive weapons; a 47 to 1 advantage in strategic defensive weapons; a 6 to 1 advantage in missile megatonnage; and missile accuracy comparable to the United States.

4. If the proposed treaty is not ratified by the United States Senate, the most likely result will be a continuation of the arms race, and its accompanying promise of nuclear holocaust.

5. A national policy referendum regarding the advisability of ratification would provide the opportunity for discussion by the governed regarding the strengths and weaknesses of the Nation. Given such an examination of national purpose and advisory vote by the people, the proposed treaty could either be ratified in a spirit of national commitment to peaceful coexistence or denied by a nation fearful of inexorable encroachment upon shared freedoms.

Petitioner contends that consideration of a matter so critically important to the future survival of his family in a free and safe society, by a government no longer considerate of his opinion, is contrary to the rights guaranteed by the Constitution of the United States. He believes, as a matter of conscience, that, irrespective of the Senate's collective action, the existing mood of defeat will lead to a decline in freedom through

appeasement, unless action is taken to include the American people in an advisory vote. The absence of such a vote leaves the petitioner with no other alternative except to petition his Government pursuant to his constitutional right to compel a vote of the people. Petitioner contends that he does not have an alternative, adequate remedy at law in that only this Court has the inherent constitutional power to compel a national referendum. The issue presented by this petition is one which this Court can and should correct by writ of mandamus.

WHEREFORE, petitioner prays:

1. That a writ of mandamus issue from this Court directed to the President and Vice President of the United States and to each of its Senators, to show cause on a date to be fixed by this Court why mandamus should not issue from this Court directing said Honorable respondents to cause a national policy referendum to be held;
2. That petitioner have such additional relief and process as may be necessary and appropriate in the premises.

Respectfully submitted,

WILLIAM J. COX,

In Propria Persona.

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Respondents.

Affidavit Re Proof of Service by Mail.

I, Roberta Byrne, being over the age of eighteen years and not a party to the above entitled action, do hereby declare that my business address is 708 Gladys Avenue, Long Beach, California, and that on June 29, 1979, I served each of the within named respondents in said action by placing three true printed copies thereof in a sealed envelope with first class (air mail) postage thereon fully prepaid, in the United States mail at Long Beach, California addressed as follows: President Carter, The White House, Washington, D.C. Vice President Mondale and each named Senator, United States Senate, Washington, D.C.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on June 29, 1979, at Long Beach, California.

/s/ Roberta Byrne

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Respondents.

**On Petition for Writ of Mandamus to the United States
Supreme Court for the United States of America.**

Brief for the Petitioner.

Jurisdiction.

The jurisdiction of this Court is involved on the premise that no other court has the inherent constitutional power to compel the other two branches of government to cause there to be held a national policy referendum. This Court would necessarily have to review the decision by any other court which rendered a decision on the merits. The judicial power of this Court is contained in Article III, Section 2, of the United States Constitution.

Constitutional and Statutory Provisions.

United States Constitution, Article III, Section 2, as amended by Articles I, X, XV, XVII, XIX, XXIV, and XXVI, Rule 23, Federal Rules of Civil Procedure (28 U.S.C.A.).

Question Presented.

Do not the American people have the right to participate in a national policy referendum regarding ratification of a proposed treaty commonly referred to as SALT II, and other matters of critical national importance?

Statement.

This is an action brought by a citizen of the United States, as a petition to his government, presented in the form of application for writ of mandamus to compel a national policy referendum, in circumstances where there are no other viable alternatives.

ARGUMENT.

I.

This Court Has Jurisdiction to Review This Petition.

While it is true that Article III, Section 2(2) of the Constitution apparently limits the original jurisdiction of the Supreme Court to "all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party," the basic grant of power to the Court contained in Section 2(1) of Article III extends the judicial power to "all Cases, in Law and Equity, arising under this *Constitution*." (emphasis added). If the relief prayed for could only be granted by the Supreme Court, would it not necessarily have original jurisdiction in a constitutional matter affecting all citizens of the Country?

For the Supreme Court of the United States to decline to review this petition, basing its decision upon a narrow interpretation of its constitutional grant of original jurisdictional powers, is to deny to all of history its previous liberal interpretations which have allowed itself and the other two branches of government to expand their powers in times of necessity. As early as 1803, this Court not only expanded its own power to include judicial review of congressional acts, although not expressly provided for in the Constitution, it further established by *dicta* the power of this Court, in matters of original jurisdiction, to compel officers of the government to perform a duty (*Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60).

If this Honorable Court does not have the constitutional power to order a national policy referendum at a time of crisis, then this petitioner does not have

a First Amendment right to petition his Government, or a Tenth Amendment right to vote on its future.

II.

It Is Necessary That This Action Be Taken on Behalf of the Class Represented.

In a suit by a citizen of the United States to compel a national referendum to ensure a constitutional right of vote by each citizen, it is clear that every American is affected by and is a necessarily interested party in the action. The impossibility of joining all other parties brings the action within the requirements of Federal Rules of Civil Procedure Section 23 (28 U.S.C.A.) Petitioner's interest is undifferentiated from the other members of the class, he possesses the same interest, and he will, in the absence of action by this Court, suffer the same injury.

III.

It Is Appropriate That Mandamus Issue.

Assuming correctness of the argument presented *supra* concerning original jurisdiction, the power of this Court to issue mandamus to compel compliance is inherently intrinsic in the Constitution, otherwise a citizen would be without a remedy should a proper question be presented. References in *Marbury v. Madison*, *supra* to the absence of such power must be distinguished as *dicta* in that there the Court held that there was no original jurisdiction. Subsequent cases decided by this Court have established the power of the court to compel the performance of a *ministerial* duty e.g., *Garfield v. U.S.*, 211 U.S. 249, 29 S.Ct. 62, 53 L.Ed. 168.

A more troublesome question is presented in matters of *discretion*. Petitioner concedes the absence of case law to support the proposition that an elected governmental official may be compelled to exercise his or her discretion in a particular manner. However, an even more difficult case involves the situation when there is but a single viable decision to be made in order to preserve the Constitution of the United States. Does not the oath of office taken by an elected official become a ministerial duty to be exercised in the only manner consistent with the maintenance of freedom? Again assuming the correctness of petitioner's asserted facts, would not mandamus be appropriate to compel the performance of an *essential* act?

To cloak elected representatives in the robe of inviolability to process is surely to place form over substance. Mandamus can issue to provoke action by a presidential appointee who acts at the direction of the President e.g. *Schlesinger v. Reservists to Stop the War*, 418 U.S. 208, 41 L.Ed.2d 706, 94 S.Ct. 2925. If the action to be taken could only be done by elected representatives, then must not mandamus lie in an appropriate case?

At which point does a political question become one of survival?

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the King himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of the court. . . .

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." (*Marbury v. Madison, supra* at p. 162.) Can any individual escape the mandate of the Constitution, no matter the privileges of high office?

IV.

**It Is Necessary and Urgent That This Matter
Be Reviewed.**

If it were true that a course of action was being undertaken by elected representatives which would ultimately be destructive of the continuance of effective common government, would not there be a co-existent threat to the lives and fortunes of each of its citizens? If a citizen were to recognize what she or he perceived as such a threat, what redress would that person have?

Inherent in a republican form of government is access by individuals to their elected officials. However, if one were to believe regularly published reports that Congress is in the grips of special interest groups, and if one were to realistically perceive that letters by an ordinary citizen to one's elected representatives either go unanswered or provoke a machine-signed form letter response, then can it still be said that ordinary citizens are represented in government?

Another alternative, clearly abhorrent to the continuation of peaceful government, would be for a citizen to declare his or her independence, and to undertake violently to subvert the action of government. In the Declaration of Independence, it was made clear that individuals have a right to declare their independence

of a government which is no longer willing to address itself to the fundamental rights of its citizenry.

"That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing the powers in such form, as to them shall seem most likely to effect their Safety and Happiness." (Emphasis added).

Declaration of Independence (1776).

In a free and peaceful society, is not the only remaining viable remedy a petition to compel a vote? The right of the people to vote for elected representatives is contained in the Constitution as amended by Articles XV, XVII, XIX, XXIV, and XXVI. In addition, every citizen of the United States has a right to petition the government for redress of grievances. (U.S. Constitution, First Amendment) Confirmation of the right to petition in the Bill of Rights indicates that its effect provides more than a right to simply vote for elected representatives. Otherwise its presence there would be without effect, a principle contrary to rules of constitutional interpretation. If a petition were to be brought to compel action by the executive and legislative branches of government, where else could the petition be brought but in the Supreme Court of the United States?

All power not delegated by the Constitution to the federal government or reserved to the States, resides with the people. (U.S. Constitution, Tenth Amendment) Since there can be no right without a remedy, is

it not true that the one power retained by each citizen in a democratic system is the vote? Therefore, if a decision had to be made, affecting the future of all people, would they not have the right to demand a vote on the issue? If such a vote was advisory only, would not the process be consistent, rather than inconsistent, with the Constitution?

Should this Court decide that the continued existence of the Nation, as originally conceived, was dependent upon a national expression of its governed people, would it not have a duty to compel the Senate and the President of the United States to hold a national policy referendum? Would not such action be essential in order to peaceably explore the will of the people necessary to ensure their survival and that of their common government?

Conclusion.

At no time in the history of the United States has it been so threatened as it is today. In a shrinking technological world, in which wide oceans and friendly neighbors no longer offer protection against a precise first strike nuclear attack against our defensive weapons; one in which the United States has become increasingly dependent for its survival upon petroleum energy from unstable nations rapidly coming under the influence of totalitarian domination; and one in which the United States is viewed with disdain by many, as a country without internal conviction or external strength, is it not time to allow the people a voice in the future of their nation and in the quality of life preserved for their children? Internally, is it not true that the election of representatives is now more dependent upon massive expenditures of contributions from special inter-

est groups than upon a vote by an informed electorate? Has not the vote in political contests become so valueless as to create disenfranchisement through apathy for most Americans?

Among candid speaking people, it is now necessary, for the first time, to assess the possibility of reduction in freedom in order to ensure our national survival. In a world in which the frequency of internal terrorist attacks has become so commonplace as to regularly cause the collapse of governments, is it realistic to believe that the United States will long remain unscathed? Upon the advent of internal upheaval, how long will the Bill of Rights survive the need of government to maintain order? An exiled prominent soviet dissident, Aleksandr Solzhenitsyn, advised in a commencement address to Harvard graduates in 1978 that Americans must be ready to surrender freedoms in order to counter Russian power. Do we want our children to live in the absence of freedom? Do we want to? Must we?

The Constitution expressly provides a right of citizens to petition their government for redress. If individuals are denied a right of redress, is not the alternative a resort to violence? In a free society, is it not the duty of a concerned person of conscience to avoid the use of force, even if he believes that his existence under ineffectual government is being threatened? Does it not become the duty of such an individual to petition his government to allow him to exercise his vote along with all other citizens in a national policy referendum in order to effectuate a peaceful reformation?

Is it true that we are at a point in history where critical decisions are being made which shall forever

decide the future of our Country? Is it not a time of peril for all those citizens upon whom the Government is dependent for its legitimacy?

Has it not been a duty of each of us since the moment of the existence of Mankind to provide a better world for our children than that which we inherited from those who conceived us? If this be true, and if a citizen finds as a matter of conscience, that his government is no longer responsive to his needs, is it not his duty to his children and grandchildren to issue the most forceful petition possible, short of the threat of violence? Does not the Supreme Court have an equivalent duty to at least review such a petition, to weigh the threat, and to consider alternatives?

Declaration by Petitioner.

I, WILLIAM J. COX, a citizen of the United States, by virtue of the residence of my family in this country since before its States were united, do hereby make the following declaration:

Through the freedom provided by the Constitution of the United States, I have had the security to absorb the product of a free press, an education by which to appreciate it, and travel by which to compare it. My freedom allows me to say that I apprehend the peril of imminent ineffectual government. I see the unavailability of essential energy to continue our technological and social progress; I see our industrial development slowed or reversed by the absence of capital; I see the free enterprise system being increasingly stifled by excessive government regulation; I see poor people being denied adequate medical care; I see double digit

inflation coupled with the threat of recession; I see an apathetic and ineffectual American government apparently content to allow my children to become second class World citizens, and I see much more which troubles me.

In particular, I sense a crisis which compels me to submit this petition. The Senate of the United States is presently being asked to ratify a treaty which has been signed by the President of our country and that of the Soviet Union, which proposes to place limitations upon the number and development of nuclear warheads and rockets. I have not access to the actual document or its secret protocols, if any. I have only access to a free press to inform me of its salient features. As I understand its provisions, certain Soviet strategic weapons are not included in the inventory, notably the Backfire bomber and the SS-20 missile which can easily be converted into an intercontinental weapon. At the same time our cruise missiles and many obsolete bombers which are in an Arizona graveyard are included. More specifically, the Soviet Union has the right to retain over three hundred heavy ICBM's, while we would not have the right to build any.

I have read that the Soviets would have the first strike capacity to destroy up to ninety-five percent of our ICBM force, and that they would have more missiles left over for a second strike than we had to begin with. If this is true, it would be suicidal for us to retaliate when the Soviet's second strike would kill between 100 million and 150 million Americans.

I agree that our remaining retaliatory missiles would still have the ability to destroy Russia as a society. I suspect that with internal integrity destroyed, they

would sooner or later fall prey to those surrounding nations that they have so long subjugated or bullied. But, what I fear is that we would no longer risk pushing the button.

My life has been long enough to remember that once Russia was close to destruction and was undoubtedly saved by Free World industry and capital support. I know that they paid heavily in the loss of human life, and that their recovery has represented a massive sacrifice by their people. However, it is undisputed that they violated the terms of the Yalta agreement before the ink was dry. I remember Hungary and I remember Czechoslovakia. My memory need not be so lengthy to almost daily read about the manner in which they so trample upon the intrinsic rights of their own citizens.

It is not that I am committed to disapproval of the proposed treaty. I see it as such a critical step being taken by my own government, in which I have so little personal confidence, that gives me cause for concern. I see the vote of the Senate, either way, as being destructive. If we reject the treaty we will fuel a foolish extension of the arms race. If we ratify the treaty, we will lock ourselves into an inferior position. I propose that a national debate and advisory vote by the American people, in which we examine our government and its effectiveness, will produce programs which will *peaceably* ensure our security, should the vote be for ratification. For example, if we as a people were to dedicate ourselves to a massive and majestic exploration of the Universe around us, would we not necessarily secure and maintain our technological advantage? I question whether such a program,

subsequently announced, would produce a cry of "foul" from the ever suspicious Russian government. I read recently where they are demanding that we discontinue our NASA space shuttle program. I seem to recall that one of its first tasks will be to lift a great telescope into space, which we have agreed to share with every other nation on earth. If Man had early agreed to neglect the study of the stars, would Columbus have ever discovered America? I further suspect that a national dialogue might lead to other adjustments in governmental policy or organization which will forever ensure our viability as a free and mighty nation.

I pray, along with all those that I purport to represent, for the opportunity to preserve the democratic process by participating in an advisory vote by the people. I recognize it as my duty to future generations to petition my government and to exercise my vote, in repayment for that which has been given me by all those who have labored and died for my freedom. I am a person possessed of but a single vote, and it is upon that foundation that I do hereby most respectfully submit my petition, asking only that it be reviewed by my government.

In truth and honor,

WILLIAM J. COX,

Petitioner.

In Propria Persona.

APPENDIX.

I pray for leave of the Court to file the Appendix
upon request of any party or of the Honorable Court.